

AN ACT

relating to certain debt cancellation agreements made in connection with retail installment contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 348.124(a), Finance Code, is amended to read as follows:

(a) In connection with a retail installment transaction under this chapter, a retail seller may offer to the retail buyer a debt cancellation agreement, including a guaranteed asset protection waiver or similarly named agreement. The retail seller may not require that the purchase of a debt cancellation agreement by the retail buyer be made in order to enter into a retail installment transaction.

SECTION 2. Chapter 348, Finance Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. CERTAIN DEBT CANCELLATION AGREEMENTS

Sec. 348.601. LIMITATION ON CERTAIN DEBT CANCELLATION AGREEMENTS. (a) This subchapter applies only to a debt cancellation agreement that includes insurance coverage as part of the retail buyer's responsibility to the holder.

(b) The amount charged for a debt cancellation agreement made in connection with a retail installment contract must be created in good faith and be commercially reasonable. Section 348.124(c) does not apply to a debt cancellation agreement

1 regulated under this subchapter.

2 (c) The debt cancellation agreement becomes a part of or a
3 separate addendum to the retail installment contract and remains a
4 term of the retail installment contract on the assignment, sale, or
5 transfer by the holder.

6 Sec. 348.602. DEBT CANCELLATION AGREEMENTS EXCLUSION
7 LANGUAGE. (a) In addition to the provisions required by Section
8 348.603, a debt cancellation agreement must fully disclose all
9 provisions permitting the exclusion of loss or damage including, if
10 applicable:

11 (1) an act occurring after the original maturity date
12 or date of the holder's acceleration of the retail installment
13 contract;

14 (2) any dishonest, fraudulent, illegal, or
15 intentional act of any authorized driver that directly results in
16 the total loss of the motor vehicle;

17 (3) any act of gross negligence by an authorized
18 driver that directly results in the total loss of the motor vehicle;

19 (4) conversion, embezzlement, or concealment by any
20 person in lawful possession of the motor vehicle;

21 (5) lawful confiscation by an authorized public
22 official;

23 (6) the operation, use, or maintenance of the motor
24 vehicle in any race or speed contest;

25 (7) war, whether or not declared, invasion,
26 insurrection, rebellion, revolution, or an act of terrorism;

27 (8) normal wear and tear, freezing, or mechanical or

- 1 electrical breakdown or failure;
2 (9) use of the motor vehicle for primarily commercial
3 purposes;
4 (10) damage that occurs after the motor vehicle has
5 been repossessed;
6 (11) damage to the motor vehicle before the purchase
7 of the debt cancellation agreement;
8 (12) unpaid insurance premiums and salvage, towing,
9 and storage charges relating to the motor vehicle;
10 (13) damage related to any personal property attached
11 to or within the motor vehicle;
12 (14) damages associated with falsification of
13 documents by any person not associated with the retail seller or
14 other person canceling the retail buyer's obligation;
15 (15) any unpaid debt resulting from exclusions in the
16 retail buyer's primary physical damage coverage not included in the
17 debt cancellation agreement;
18 (16) abandonment of the motor vehicle by the retail
19 buyer only if the retail buyer voluntarily discards, leaves behind,
20 or otherwise relinquishes possession of the motor vehicle to the
21 extent that the relinquishment shows intent to forsake and desert
22 the motor vehicle so that the motor vehicle may be appropriated by
23 any other person;
24 (17) any amounts deducted from the primary insurance
25 carrier's settlement due to prior damages; and
26 (18) any loss occurring outside the United States or
27 outside the United States and Canada.

1 (b) An exclusion of loss or damage not listed in Subsection
2 (a) may be included in a debt cancellation agreement only if the
3 exclusion is disclosed in plain, easy to read language.

4 Sec. 348.603. REQUIRED DEBT CANCELLATION AGREEMENT
5 LANGUAGE. A debt cancellation agreement must state:

6 (1) the contact information of the retail seller, the
7 holder, and any administrator of the agreement;

8 (2) the name and address of the retail buyer;

9 (3) the cost and term of the debt cancellation
10 agreement;

11 (4) the procedure the retail buyer must follow to
12 obtain benefits under the terms of the debt cancellation agreement,
13 including a telephone number and address where the retail buyer may
14 provide notice under the debt cancellation agreement;

15 (5) the period during which the retail buyer is
16 required to notify the retail seller, the holder, or any
17 administrator of the agreement, of any potential loss under the
18 debt cancellation agreement for total loss or theft of the motor
19 vehicle;

20 (6) that in order to make a claim, the retail buyer
21 must provide or complete some or all of the following documents and
22 provide those documents to the retail seller, the holder, or any
23 administrator of the agreement:

24 (A) a debt cancellation request form;

25 (B) proof of loss and settlement payment from the
26 retail buyer's primary comprehensive, collision, or uninsured or
27 underinsured motorist policy or other parties' liability insurance

1 policy for the settlement of the insured total loss of the motor
2 vehicle;

3 (C) verification of the retail buyer's primary
4 insurance deductible;

5 (D) a copy of any police report filed in
6 connection with the total loss or theft of the motor vehicle; and

7 (E) a copy of the damage estimate;

8 (7) that documentation not described by Subdivision
9 (6) or required by the retail seller, the holder, or any
10 administrator of the agreement is not required to substantiate the
11 loss or determine the amount of debt to be canceled;

12 (8) that notwithstanding the collection of the
13 documents under Subdivision (6), on reasonable advance notice the
14 retail seller, the holder, or any administrator of the agreement
15 may inspect the retail buyer's motor vehicle;

16 (9) that the retail seller or holder will cancel all or
17 part of the retail buyer's obligation as provided in the debt
18 cancellation agreement on the occurrence of total loss or theft of
19 the motor vehicle;

20 (10) the method to be used to calculate refunds;

21 (11) the method for calculating the amount to be
22 canceled under the debt cancellation agreement on the occurrence of
23 total loss or theft of a motor vehicle;

24 (12) that purchase of a debt cancellation agreement is
25 not required for the retail buyer to obtain an extension of credit
26 and will not be a factor in the credit approval process;

27 (13) that in order to cancel the debt cancellation

1 agreement and receive a refund, the retail buyer must provide a
2 written request to cancel to the retail seller, the holder, or any
3 administrator of the agreement;

4 (14) that if total loss or theft of the motor vehicle
5 has not occurred, the retail buyer has 30 days from the date of the
6 retail installment contract or the issuance of the debt
7 cancellation agreement, whichever is later, or a longer period as
8 provided under the debt cancellation agreement, to cancel the debt
9 cancellation agreement and receive a full refund;

10 (15) that the retail buyer may file a complaint with
11 the commissioner, and include the address, phone number, and
12 Internet website of the Office of Consumer Credit Commissioner; and

13 (16) that the holder will cancel certain amounts under
14 the debt cancellation agreement for total loss or theft of a motor
15 vehicle, in the following or substantially similar language: "YOU
16 WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF
17 A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT
18 CANCELLATION AGREEMENT."

19 Sec. 348.604. APPROVAL OF FORMS FOR DEBT CANCELLATION
20 AGREEMENTS. (a) Debt cancellation agreement forms must be
21 submitted to the commissioner for approval. Debt cancellation
22 agreement forms may include additional language to supplement the
23 terms of the debt cancellation agreement as required by this
24 subchapter.

25 (b) If a debt cancellation agreement form is provided to the
26 commissioner for approval, the commissioner has 45 days to approve
27 the form or deny approval of the form. If after the 45th day the

1 commissioner does not deny the form, the form is considered
2 approved.

3 (c) If the debt cancellation agreement form is approved by
4 the commissioner or considered approved as provided by Subsection
5 (b), the terms of the debt cancellation agreement are considered to
6 be in compliance with this subchapter.

7 (d) The commissioner may deny approval of a form only if the
8 form excludes the language required by Sections 348.602 and 348.603
9 or contains any inconsistent or misleading provisions. All form
10 denials may be appealed to the finance commission.

11 (e) If after approval of a form the Office of Consumer
12 Credit Commissioner discovers that approval could have been denied
13 under Subsection (d), the commissioner may order a retail seller,
14 any administrator of the debt cancellation agreement, or a holder
15 to submit a corrected form for approval. Beginning as soon as
16 reasonably practicable after approval of the corrected form, the
17 retail seller, administrator, or holder shall use the corrected
18 form for all sales.

19 (f) A debt cancellation agreement form that has been
20 approved by the commissioner is public information subject to
21 disclosure under Chapter 552, Government Code. Section 552.110,
22 Government Code, does not apply to a form approved under this
23 subchapter.

24 Sec. 348.605. ADDITIONAL REQUIREMENTS FOR DEBT
25 CANCELLATION AGREEMENTS. (a) If a retail buyer purchases a debt
26 cancellation agreement, the retail seller must provide to the
27 retail buyer a true and correct copy of the agreement not later than

1 the 10th day after the date of the retail installment contract.

2 (b) A holder must comply with the terms of a debt
3 cancellation agreement not later than the 60th day after the date of
4 receipt of all necessary information required by the holder or
5 administrator of the agreement to process the request.

6 (c) A debt cancellation agreement may not knowingly be
7 offered by a retail seller if:

8 (1) the retail installment contract is already
9 protected by gap insurance; or

10 (2) the purchase of the debt cancellation agreement is
11 required for the retail buyer to obtain the extension of credit.

12 (d) This section does not apply to a debt cancellation
13 agreement offered in connection with the purchase of a commercial
14 vehicle.

15 (e) The sale of a debt cancellation agreement must be for a
16 single payment.

17 (f) A holder that offers a debt cancellation agreement must
18 report the sale of and forward money received on all such agreements
19 to any designated party as prescribed in any applicable
20 administrative services agreement, contractual liability policy,
21 other insurance policy, or other specified program documents.

22 (g) Money received or held by a holder or any administrator
23 of a debt cancellation agreement and belonging to an insurance
24 company, holder, or administrator under the terms of a written
25 agreement must be held by the holder or administrator in a fiduciary
26 capacity.

27 (h) A retail seller that negotiates a debt cancellation

1 agreement and subsequently assigns the contract shall:

2 (1) maintain documents relating to the agreement that
3 come into the retail seller's possession; and

4 (2) on request of the Office of Consumer Credit
5 Commissioner, cooperate in requesting and obtaining access to
6 documents relating to the agreement not in the retail seller's
7 possession.

8 Sec. 348.606. REFUND FOR DEBT CANCELLATION AGREEMENTS. (a)
9 A refund or credit of the debt cancellation agreement fee must be
10 based on the earliest date of:

11 (1) the prepayment of the retail installment contract
12 in full before the original maturity date;

13 (2) a demand by the holder for payment in full of the
14 unpaid balance or acceleration;

15 (3) a request by the retail buyer for cancellation of
16 the debt cancellation agreement; or

17 (4) the total denial of a debt cancellation request
18 based on one of the exclusions listed in Section 348.602, except in
19 the case of a partial loss of the covered motor vehicle.

20 (b) The refund or credit for the debt cancellation agreement
21 can be rounded to the nearest whole dollar. A refund or credit is
22 not required if the amount of the refund or credit calculated is
23 less than \$5.

24 (c) If total loss or theft has not occurred, the retail
25 buyer may cancel the debt cancellation agreement not later than the
26 30th day after the date of the retail installment contract or the
27 issuance of the debt cancellation agreement, whichever is later, or

1 a later date as provided under the debt cancellation agreement. On
2 cancellation, the holder or any administrator of the agreement
3 shall refund or credit the entire debt cancellation agreement fee.
4 A retail buyer may not cancel the debt cancellation agreement and
5 subsequently receive any benefits under the agreement.

6 (d) A holder may in good faith rely on a computation by any
7 administrator of the agreement of the balance waived, unless the
8 holder has knowledge that the computation is not correct. If a
9 computation by the administrator of the balance waived is not
10 correct, the holder must within a reasonable time of learning that
11 the computation is incorrect make the necessary corrections or
12 cause the corrections to be made to the retail buyer's account. This
13 subsection does not prevent the holder from obtaining reimbursement
14 from the administrator or another responsible for the debt
15 cancellation agreement or computation.

16 SECTION 3. The changes in law made by this Act apply only to
17 debt cancellation agreements subject to Subchapter G, Chapter 348,
18 Finance Code, as added by this Act, entered into on or after
19 September 1, 2011.

20 SECTION 4. This Act takes effect September 1, 2011.

H.B. No. 2931

David Newkirk

President of the Senate

Joe Straus

Speaker of the House

I certify that H.B. No. 2931 was passed by the House on May 13, 2011, by the following vote: Yeas 143, Nays 1, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2931 on May 27, 2011, by the following vote: Yeas 137, Nays 0, 3 present, not voting.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 2931 was passed by the Senate, with amendments, on May 25, 2011, by the following vote: Yeas 31, Nays 0.

Daisy Spaw

Secretary of the Senate

APPROVED: 17 JUN '11

Date

RICK PERRY

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
9pm O'CLOCK

JUN 17 2011

Debra R. Edwards

Secretary of State